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OFFICE OF THE NEW YORK STATE  
ATTORNEY GENERAL



FREEDOM ON FOUR LEGS:  
SERVICE ANIMALS,  
INDIVIDUALS WITH DISABILITIES, AND  
THE LAW

CIVIL RIGHTS BUREAU  
JUNE 2002



**State of New York  
Office of the Attorney General  
The Capital  
Albany, NY 12224**

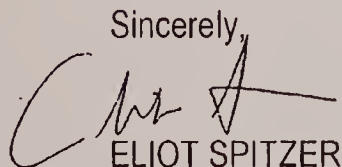
Dear Fellow New Yorker:

As Attorney General, one of my most important responsibilities is to safeguard the civil rights of all New Yorkers. I do this primarily through my office's Civil Rights Bureau, which enforces federal, state and local laws prohibiting discrimination on the basis of race, color, national origin, sex, religion, age, marital status, sexual orientation, and disability. The Civil Rights Bureau investigates complaints alleging a pattern, practice, or policy of unlawful discrimination in employment, housing, credit, education, places of public accommodation, and other areas. Where appropriate, the Bureau files lawsuits aimed at remedying unlawful conduct.

Discrimination arises not only from prejudice and bigotry, but also from indifference and simple ignorance. Therefore, in addition to bringing lawsuits to enforce the laws, I also seek to combat discrimination through education -- informing the relevant communities and the general public about what the law requires, and seeking to bring about voluntary compliance through greater understanding.

My office organized the initiative described in this report to make individuals and businesses more aware of the rights of individuals with disabilities who rely upon the assistance of service animals. While part of our work involved investigating specific allegations of unlawful activity by specific business entities, more broadly, the purpose of the initiative and this report is to create a better understanding of federal, state and local laws that protect persons with service animals. Compliance with these laws is not only legally required, it's the right thing to do.

If you have any questions that are not answered in this report, please do not hesitate to contact my Civil Rights Bureau at (212) 416-8250 (voice) or (800) 788-9898 (TDD).

Sincerely,  
  
ELIOT SPITZER





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## INTRODUCTION

For people with disabilities, ordinary life activities often require extraordinary resolve. Grocery shopping, catching a movie, picking up dry cleaning, eating in a restaurant, or riding mass transit -- everyday activities like these can present a range of obstacles, large and small, that must be faced and overcome. For some who confront such daily challenges, help comes in the form of a trained service animal. From guide dogs to hearing impairment dogs to chimpanzees that make it possible for persons with paralysis to live independently, service animals make it possible for people to safely and securely navigate the streets, sidewalks, and shopping malls, and to do so on their own and with pride. Service animals open doors-- literally and figuratively; as the work of one guide dog proved on September 11, they can even save lives.<sup>1</sup>

Accordingly, the relationship between a service animal and its owner is a special one, and one that the law recognizes and protects. Federal and state laws accord persons who rely upon service animals the right to have their animals accompany them wherever they go. In some quarters, this right is not well understood; in others, it is not understood at all. This report, and the investigative measures upon which it is based, collectively represent an effort to foster greater understanding of the rights of the more than 11,500,000 New

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<sup>1</sup> New York Times "Sept. 11, as Big as Life" 1/10/02 (Omar Rivera assisted from the 71<sup>st</sup> floor of the World Trade Center by his guide dog.)

Yorkers with disabilities, and, through that means, to encourage better compliance with applicable law. To that end, the report considers the issue of service animal accompaniment from a variety of perspectives -- legal, experiential, and practical -- and presents a series of "snapshots" of the challenges faced by disabled persons who use service animals in New York.

Part One provides an overview of the issues -- an overview that arises from the many complaints filed with the Office of the Attorney General's Civil Rights Bureau ("OAG") by individuals with disabilities from around the State. These complaints provide critical context for the discussion that follows. Part Two provides a systematic review of the law governing service animals, presented in plain English for the broadest possible dissemination. Part Three documents the results of a statewide undercover "sweep" in which more than 50 retail locations -- restaurants, movie theaters, mass transit, and the like -- were tested for how they treat persons who are accompanied by service animals, as well as three different investigations arising from actual complaints against retail establishments. Finally, based on the foregoing, Part Four outlines practical solutions and recommendations designed to ensure that businesses comply with both the letter and the spirit of the law.

## PART ONE

### OVERVIEW

***"My guide dog is an extension of my capability to interact independently in the community. Being denied that independence . . . was a dehumanizing experience."***

**- Sally, December 1999**

The phenomenon could not be denied: of the hundreds of disability-related complaints received by the OAG over the last two years, the single largest category of complaints filed centered on the allegation that persons with disabilities were denied equal access to places of public accommodation<sup>2</sup> because they were accompanied by a service animal. The specific factual contexts of these complaints varied, but the experience of being constructively or explicitly denied equal access -- and often feeling humiliated in the process -- was consistent throughout.

Complainants described rude and intrusive questioning (about the nature of the person's disability, whether the animal was "licensed", etc.), verbal hostility ("You're holding up the bus!"), and even being subjected to outright physical force, all because they were accompanied on their daily errands by a service animal. From Buffalo to Binghamton to New York City to Long Island, reports surfaced about shopkeepers, theater ushers, transit workers, wait staff, and even, on occasion, police officers demonstrating a stunning lack of

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<sup>2</sup> Public accommodations generally include businesses or entities that cater to or are used by the public.

understanding of what service animal accompaniment is all about, and how the laws protect it. Mass transit seemed to be a particular locus of difficulties; some employees of mass transit and passenger carrier services operated on the erroneous (and unlawful) assumption that all animals, even service animals, are forbidden from riding. Finding oneself ejected from a bus, train, subway or taxi cab was not an infrequent experience for persons using service animals.<sup>3</sup>

These problems are longstanding. In response to a spate of inquiries and complaints several years ago, the OAG issued a flyer entitled "Service Animals: Frequently Asked Questions." The flyer provided a short, simple explanation of the scope of legal protections for persons who rely on the assistance of service animals. As unsettling confrontations between individuals using service animals and others became more common, some people reported carrying the OAG's "Service Animals" flyer with them everywhere, in an attempt to prevent or fend off troubling encounters during their daily routines.

Faced with these complaints, the OAG responded by: (i) reviewing the applicable federal and state laws on the subject, and reducing them to a plain-English summary; (ii) implementing a statewide program of undercover tests conducted by volunteers (and their service animals) and the OAG, to obtain first hand information about the quality of treatment afforded in restaurants, cabs,

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<sup>3</sup> As will be explained in the legal section, all animals trained to provide a service to individuals with a disability are exempt from no pets policies, and must be allowed to accompany their companion.

retail stores, malls, museums, beauty salons, and other places of public accommodation around the state;<sup>4</sup> (iii) conducting focused investigations in three specific cases where actual denials of access were alleged to have occurred; (iv) conferring with Independent Living Centers and other advocacy organizations; and (v) developing recommendations designed to prevent and remedy violations of applicable law. Through this multi-pronged approach, the OAG hopes to highlight the pertinent issues affecting persons who rely upon service animals, and provide support and guidance to those seeking to comply with the law in this area.<sup>5</sup>

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<sup>4</sup> The details of the methodology are provided in Appendix A.

<sup>5</sup> In July and September 2000, the OAG's Civil Rights Bureau conducted training sessions for representatives from the ADA compliance and equal employment opportunity offices of various New York City municipal agencies (including the New York City Transit Authority and the New York City Police Department). These training sessions focused on the rights of individuals with disabilities who travel with service animals, and included detailed discussions of the relevant legal requirements and practical realities.



## PART TWO

### BASIC CONCEPTS AND LEGAL ISSUES

#### A. Basic Concepts: Definitions & Principles

The Americans with Disabilities Act ("ADA") defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. Service animals perform some of the functions and tasks that individuals with a disability cannot perform for themselves.

Most people are familiar with "seeing eye dogs" or "guide dogs," which are one type of service animal used by some individuals with sight impairments. There are, however, many other types of service animals that assist persons with various disabilities in their day-to-day activities. Examples include animals that:

- alert persons with hearing impairments to sounds;
- alert people with severe allergies to harmful smells;
- pull wheelchairs or carry and pick up items for persons with mobility impairments;
- assist persons with mobility impairments with balance; and
- alert their companions to the onset of potentially life-threatening seizures.<sup>6</sup>

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<sup>6</sup>Service Animal Registry of America: [www.affluent.net/sara](http://www.affluent.net/sara) (organization whose mission is to promote use of service animals and public awareness of the rights concerning them).

Importantly, animals meeting the ADA definition are considered “service animals” regardless of whether they have been licensed or certified by a state or local government or any other public or private entity.

### **1. Service Animals are not Pets**

Service animals – animals specifically trained to help individuals overcome the limitations of their disabilities – are akin to assistive technology such as eyeglasses, hearing aids, canes, wheelchairs and other adaptive equipment. They are not pets. Dogs are the most common service animals, but are by no means the only animals that can be trained to provide assistance.

### **2. No Proof or Identification is Required**

An individual with a disability who is accompanied by a service animal cannot be required to demonstrate or otherwise prove that the animal is a service animal. Many service animals are not identified by special collars or harnesses, nor is the owner required to present a license or other identification. Anyone uncertain as to whether an animal is a service animal may inquire only whether such animal is providing assistance because of a disability. One may not insist on proof or any form of documentation.

### **3. Some Disabilities are not Apparent**

Although most people think of a “guide dog” used by a sight-impaired person as the classic service animal, not all service animals assist persons with obvious or readily apparent disabilities. Many disabilities for which service



animals are useful are not readily apparent, including hearing impairments, epilepsy, heart disease, lung disease, and impairments that are psychological. A person with a disability is not required to provide any verbal or written confirmation to establish the existence or extent of his or her disability. In addition, the animal used need not be formally trained by a certified professional to perform as a service animal. The service animal need only have training sufficient to assist the disabled individual in performing specific functions and tasks pertaining to the individual's disability.<sup>7</sup>

## **B. Legal Protections & Places of Public Accommodation**

Federal and state anti-discrimination laws make it unlawful to deny or restrict access to services to an individual based on the fact that she or he is accompanied by a service animal. Places of public accommodation are covered by Title III of the ADA, a federal law, as well as by various New York State laws. The state laws that protect the rights of persons with disabilities in places of public accommodation are Sections 40-c, 47(1), and 47-b of the New York State Civil Rights Law, Sections 296(2)(a) and 296(14) of the New York State Executive Law ("Human Rights Law"), and New York CLS Transportation. The scope of these laws is discussed below.<sup>8</sup>

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<sup>7</sup> It is acceptable for a person with a disability to train a companion animal to provide the necessary services.

<sup>8</sup> Some laws provide for significant fines for violators and the possibility of civil lawsuits by complainants.

Under the ADA, a place of public accommodation is defined as a private entity that engages in commerce. Places of public accommodation under the ADA include:

- places of lodging, such as a hotel;
- places serving food and drink, such as a restaurant or bar;
- places of entertainment, such as a theater or stadium;
- places of public gathering, such as a convention center;
- places of sales, such as a retail store;
- service establishments, such as a lawyer's office, bank, dry-cleaner, or barber shop;
- public transportation, such as a train station;
- places of public display or collection, such as a museum or library;
- places of recreation, such as a zoo, park, gym, or golf course;
- places of education, such as a school; and
- social service centers, such as a homeless shelter, day care center, or senior center.

State law also identifies places of public accommodation, resort, or amusement in Civil Rights Law Article 4: Equal Rights in Places of Public Accommodation and Amusement. Section 47 of the New York Civil Rights Law offers specific protections to individuals with disabilities who are accompanied by guide dogs, hearing dogs, or service dogs. Pursuant to Civil Rights Law § 47-a,

places of public accommodation include, but are not limited to:

- all modes of public and private transportation;
- all forms of public and private housing and buildings to which the public is invited or permitted; and
- all other places of public accommodations, convenience, resort, entertainment, or business to which the general public normally or customarily is invited or permitted.

Both state and federal laws prohibit places of public accommodation from discriminating against individuals with disabilities -- *i.e.*, denying or restricting equal access -- and require such businesses to allow individuals with disabilities to bring their service animals into all areas of the establishment where customers generally are allowed. Such laws also generally prohibit undue questioning or interference. *See Stan v. Wal-Mart Stores East, Inc.*, 111 F. Supp. 2d 119 (N.D.N.Y. 2000) (on three separate occasions legally blind shopper was inappropriately challenged when trying to enter retail store accompanied by a service dog).

The ADA and similar statutes do more than just forbid outright discrimination; they require places of public accommodation to modify their policies to reasonably accommodate the use of a service animal by an individual with a disability. *See* 28 C.F.R. § 36.302. For instance, the New York Transportation Law requires public transportation services (such as public bus lines) to permit disabled passengers and their service dogs to ride on all vehicles

operated for transportation without extra charge -- notwithstanding any generally applicable rule forbidding animals in such vehicles. N.Y. C.L.S. Trans. § 147.

The ADA does not require service animals to be licensed or certified, to wear special collars or harnesses, or for their owner to carry special permits or documents. If an employee is uncertain whether an animal is a "service animal," he or she is allowed only to ask a simple question as to whether the animal is a service animal. No one may require an individual with a service animal to show documentation or other proof; nor may they question an individual about his or her specific disability. Furthermore, a place of public accommodation may not impose any type of additional fee, deposit, or surcharge for a service animal.<sup>9</sup> 28 C.F.R. § 36.302(c)(1).

The care and supervision of a service animal while in a place of public accommodation are the sole responsibility of its owner. Businesses are not required to provide care, food, or a special location for the service animal.<sup>10</sup>

There are circumstances under which a public accommodation is not required to accommodate a service animal -- that is, when doing so would result in a fundamental alteration of the nature of the business. Generally, this is not likely to occur in establishments such as restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But, if it does (for example, when a

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<sup>9</sup> If a service animal causes damage, a business may charge a damage fee, but only if a non-disabled customer would be charged a fee for the same type of damage.

<sup>10</sup> It might, however, be courteous to offer assistance such as water for the animal.

dog repeatedly barks during a movie), that animal lawfully may be excluded. A place of public accommodation may also exclude service animals whose behavior poses a direct threat to the health or safety of others. Such an action must be based on the specific situation at hand, and not on assumptions about how a particular type of animal is likely to behave. In such an event, it is generally recommended that an establishment give the disabled individual the opportunity to correct the service animal's behavior before asking the person to leave, and consider offering the person the option of continuing to enjoy the goods and services without their service animal.<sup>11</sup> See 42 U.S.C. 12182(b)(2)(A), see also 28 C.F.R. §36.302(c).

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<sup>11</sup> Federal and state law also prohibit discrimination against persons with disabilities in employment and in housing. A brief discussion of applicable law in these areas is annexed as Appendix B.



## PART THREE

### OBSTACLES FACED BY PERSONS WITH SERVICE ANIMALS

Narrative complaints from members of the public provide a vivid picture of what "discrimination" in this arena is really like. Such complaints are, however, by definition idiosyncratic -- one person's view of one set of events at one particular point in time. In order to better understand the obstacles faced by persons who rely on service animals, and to provide a greater sense of the texture of the experience, the OAG conceived and executed a "service animal sweep," using local volunteers to conduct 55 undercover tests of public accommodations in every region of the State.<sup>12</sup> Volunteer testers and their service animals, in the company of OAG personnel, were asked to seek access to a variety of establishments and services – restaurants, theaters, taxi cabs, mass transit – and to document what occurred. Taken in the context of personal narratives from real victims, the results of the sweep provide a sense of the scope and nature of the problems faced by persons who rely on service animals.

The sweep was designed as an educational tool rather than a statistically valid exercise in social science research. That said, patterns worthy of note did emerge. Testers were asked to report whether they had been denied service (denied admission to a facility, or completely refused service);

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<sup>12</sup> Tests were conducted at random locations in the metropolitan New York City area, Long Island, Westchester, Poughkeepsie, Albany, Binghamton, Syracuse, Rochester, Utica, and Buffalo. For a full accounting of the methods and findings of the tests, see Appendix A.

interrogated about their disability, or the service animal, or the need for the animal; or asked to produce documentation confirming their disability or the need for a service animal; or asked to pay a special fee because of the presence of a service animal. Obstacles of these sorts violate federal and/or state law. (See Chapter Two, supra). In more than 25% of the tests conducted, persons relying on service animals for support faced one or more of these obstacles. Put another way, unlawful discrimination occurred in more than a quarter of the tests conducted.

#### **A. Denial of Access**

Denials of access to places of public accommodation are certainly the most dramatic and graphic form of discrimination against people who rely upon service animals. When a denial occurs, a person is either literally excluded from an establishment, ignored and refused service while in the establishment, or subjected to such excessive waiting that equal service is effectively denied. Although the historical context is completely different, denials of this sort summon images of black and brown patrons being refused service at lunch counters in the American South prior to passage of the Civil Rights Act of 1964.

In the tests conducted by the OAG, outright denials of service occurred in only a small number of cases -- less than 5% of the tests conducted. Yet, as the reports of victims attest, when a denial occurs, it can be a devastating



and humiliating experience. Consider the testimony of Sally,<sup>13</sup> a woman with a sight impairment. Sally relies upon a guide dog to get around safely. One afternoon in December 1999, Sally and her friend attempted to eat at a deli in New York City accompanied by Sally's service dog. Sally described what happened next:

The hostess immediately approached us and asked us to leave. Her reason was that the other customers would not like to have a dog in the restaurant . . . I offered a card stating the laws of the ADA [Americans with Disabilities Act] . . . The woman [looked at it and said] that I could have access to the restaurant in two hours . . . We left the restaurant upset, embarrassed and humiliated.

Robert had an almost identical experience in July 2001 at a restaurant in Manhattan.

When I arrived at the restaurant with my guide dog, they refused to allow me to enter. When finally they allowed me to be seated . . . they complained about the dog being 'in the way.' I did not get service after a half-hour, so I finally left.

Janice, a lawyer, is hearing impaired. She relies on the assistance of her hearing dog, "Honey," to alert her to sounds that might indicate danger. Janice's disability is not apparent; she does not, for example, wear hearing aids. An incident on a New York City subway in March 2000 was, she wrote, quite "typical" of what she experiences as a person with a non-apparent disability who utilizes a service animal. After boarding the subway to go home from work,

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<sup>13</sup>Due to the sensitive nature of the complaints and in the interest of protecting the privacy of the complainants, only the first names of complainants are used in this Report.

Janice and "Honey" were confronted by a transit worker.

When I tried to explain that 'Honey' is a service dog and that I had a right to have her with me, [the worker] became hostile and, after an angry confrontation, radioed ahead for 'back up.' . . . All the while I kept repeating: 'I'm deaf; she's a service dog. I'm deaf; she's a service dog.' At the next stop, a mob of [transit] employees [and] two police officers were waiting for the train to arrive and, in anticipation of whatever was to be expected, a crowd had assembled. When the train pulled in [to the station], two police officers boarded and ejected me from the train.

So profound and troubling is the experience of being physically barred, ejected from, or denied service by a retail establishment that the OAG undertook focused investigations of such denials in three specific cases. One involved a patron allegedly being ejected from a clothing store in Mt. Vernon, Westchester County. Two others involved alleged refusals to rent motel rooms in Oneonta, New York to a patron with a guide dog. Based on the OAG's investigation of these matters, including extensive interviews and discussions with both the alleged victims and the proprietors of the businesses accused, all were resolved short of full scale litigation. Two were resolved by the entry of court orders on consent (consent decrees), directing that the companies undertake specific remedial measures. (*People v. Chambers*; *People v. Budget Inn*). In the third case, which involved a motel in Oneonta, the matter was resolved with a settlement agreement along the same lines. (*Matter of Christopher's, Inc.*).

The three cases each involved outright denials of service. In *Chambers*, a blind patron with a guide dog entered into the clothing store and

was ordered out of the store because dogs were not allowed. In *Budget Inn*, and *Christopher's*, a family from another state was in the town visiting colleges with their teenaged son. The father was blind, and traveling with a guide dog. The complainants were denied a room because of the motels' anti-pet policies. When informed about the disability laws, the owners of the establishments apologized to the patrons, and agreed to institute anti-discrimination policies and train their employees accordingly.

## **B. Interrogation, Harassment, and Demands For Documentation**

As set forth in Part Two's discussion of the law, asking a person accompanied by an animal whether the animal is a service animal, or inquiring about the nature of the accommodation that an individual with a disability might need, are permissible and appropriate courses of conduct under existing law. Neither permissible nor appropriate, however, are intrusive questions about the nature of a person's disability, demands that a person present proof or documentation of the animal's status as a service animal or, obviously, conduct designed to intimidate or harass someone on the basis of this disability and/or reliance upon a service animal. Such intrusions are not only humiliating for the victim and unlawful; they can even be dangerous, placing the person with a disability and/or the service animal at risk.

In more than 18% of the tests conducted in the OAG's service animal sweep testers encountered excessive questioning, demands for documentation, or harassment. Although seven out of the ten such instances occurred in cases where the tester's disability was readily apparent (e.g., sight-impairment, wheelchair-assisted), persons who use service animals to compensate for non-apparent disabilities are particularly at risk, on account of people's suspicion that they have no disability at all. The experience of Dennis, whose disability is not apparent, on a New York City subway is instructive. En route to a doctor's appointment and in the company of his service dog, Dennis was approached by a

transit police officer:

I was stopped and questioned about the presence of my service animal. The officer repeatedly requested information regarding the nature of my disability, refused to read the [pamphlet that explained the] NYS and federal laws which I offered to him, refused to inquire with his supervisor [about the rights of persons with service animals], and issued me a Notice of Violation for having an 'unauthorized dog' in the transit system.

Estelle, who is hearing impaired and suffers from diabetes, reported a similar experience on a New York City bus. First, the bus driver tried to keep her off the bus entirely; then, he demanded to see identification for the dog. When she told the driver that she had no such documentation:

The driver refused to move the bus and informed the other passengers that it was my fault that the bus wasn't moving . . . Because I am totally deaf in one ear, I could not hear what the driver told the passengers . . . A number of the passengers began yelling at me to get off the bus with my dog . . .

Instances like these plainly reflect unequal access to public accommodations. Put another way, the quality of the experience of entering or utilizing a public accommodation was so diminished that a violation of law – i.e., discrimination – can be said to have occurred.

### **C. Fees**

Business owners who encounter persons accompanied by service animals sometimes believe that they are entitled to charge an extra fee to accommodate persons accompanied by service animals. Such fees are unlawful; they impose additional costs upon a person based on their disability, and,



separately, can constitute a failure to reasonably accommodate a person with a disability. Although the OAG has received few unsolicited complaints alleging the charging of additional fees to persons using service animals, the service animal sweep resulted in two instances where operators of places of public accommodation sought to charge such fees. In one case, a tester (a sight-impaired woman with a guide dog) called a car service for a ride. When the driver pulled up, he initially said that he would not take the dog. When informed that it was a service animal, the driver then called the dispatcher who informed the driver that the dog was allowed in the vehicle, but that he could charge a \$5.00 cleaning fee. In another instance, the tester (a person in a wheel-chair who uses a dog to open doors and retrieve items) went to a restaurant. Although the restaurant allowed her in with her service dog, they acted "afraid of her dog," and also charged her an extra \$5.00. In a similar complaint, a New York City resident called the car service to take her daughter to the airport. The daughter was traveling with a guide dog. When the driver arrived, he initially stated that the dog would not be allowed into the car. After explaining the laws to the driver, the passenger was told that the driver would only take her if she paid an extra cleaning fee.<sup>14</sup> The passenger opted not to ride in the car and instead took a taxi to the airport. While it is clear that the sweep did not uncover a widespread

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<sup>14</sup>When the OAG contacted the company about this driver, they agreed to inform their drivers about the laws protecting individuals with disabilities.

problem in this respect, plainly retailers and other business persons should be reminded of the legal prohibitions on this practice.



## **PART FOUR**

### **CONCLUSIONS & RECOMMENDATIONS**

The overriding goals of the OAG's work on behalf of persons who rely on service animals are to educate the public, the business community and others about the scope of protections afforded by law, and to seek compliance by all relevant actors. With respect to compliance, two questions predominate: (1) How is compliance -- an eradication of discrimination in this context -- best achieved? (2) Beyond the legal requirements, how can the public act in ways that might help persons with service animals feel welcomed? This chapter proposes answers to those questions based on the enforcement work done by the OAG in civil rights generally and the disability rights arena in particular, and on the OAG's outreach efforts with advocacy organizations.

#### **A. Conclusions**

The OAG's work on behalf of persons who rely upon the assistance of service animals confirms the existence of a basic lack of understanding concerning service animals, and the rights of those who use them. This lack of understanding may explain the denial of access, interrogation, harassment, or fee requests that persons with disabilities – especially those with non-apparent disabilities – confront all too often in everyday life with a service animal.

While the OAG uncovered considerable lack of awareness of the rights of persons who use service animals, the OAG also learned of numerous

businesses across the state whose practices actually exceeded legal requirements. Some establishments visited by the OAG testers posted signs notifying the public that service animals were welcomed. Some employees conscientiously inquired as to whether the individual needed any assistance, or whether the service dog needed water. One restaurant in Oneonta, New York offered menus in braille. Employees at the Empire State Building, without being asked, offered a tester with a guide dog assistance in obtaining a ticket to the observation deck, and helped guide him to the elevators. The tester, a native New Yorker who acquired a sight impairment later in life, had only been to the Empire State Building once since he was a child, and had never been there alone. In an effort not to compromise the results of the test, the OAG staff person who accompanied the tester did not actively assist him, but merely stood nearby and observed the tester's interactions. On the observation deck at the top of the Empire State Building, the tester and his guide dog were able to maneuver around the deck with ease, engaging in conversations with tourists. He noted that he felt liberated, and was surprised by how friendly many of the people were. This type of comfortable interaction cannot be mandated, but can only be achieved through information and understanding.

## **B. Recommendations**

The dichotomy between the positive experiences and the complaints highlight the clear need for increased information in this area. Individuals with disabilities must be able to count on more than just the good deeds of a few; they must be able to expect compliance with the law as the norm. The OAG therefore recommends that businesses and the general public obtain information about the law and about appropriate ways to act when encountering a person with a service animal, and that establishments catering to the public consider the following:

### **1. Posting of Standard Signage**

Greater awareness about the accommodations required for individuals requiring the service of an animal could be achieved readily if businesses posted standard signs outlining the rights of persons with disabilities. Such signage would be effective if printed in large print (and in braille, if possible) and posted in a conspicuous area. The sign should notify the public that individuals with disabilities and their service animals are welcomed, and should provide information about how to file a complaint in the event that someone believes his or her rights have been infringed upon. A standard sign of this type is cost effective, good for public relations, and would serve as a gentle reminder to employees and to the public at large of the special needs and rights of some individuals with disabilities. (See model sign annexed at Appendix F).

In each of the four OAG investigations and settlements involving service animals, the establishments agreed to post such signs, which welcomed persons with service animals and informed readers they could obtain a complaint form from a manager and a copy of it for their records.

## **2. Anti-Discrimination Policies & Procedures**

Businesses and establishments that cater to the public should institute anti-discrimination policies and train their employees accordingly. Anti-discrimination policies are written documents that explain to employees, in plain English, the requirements of the law and offer helpful tips about dealing with service animal accompaniment. Such a policy should be provided as part of the company's overall employee training, and should outline the law protecting persons with disabilities, define what a service animal is, provide brief examples of how to accommodate a person with a service animal, and inform the employee of the consequences of violating the policy. Employers may also wish to have employees log or note requests for disability accommodations in order to better monitor the special needs of some of their patrons. (See model policy annexed at Appendix G). By instituting such a policy, a business could reinforce for its employees the importance of complying with the ADA and related laws, and let the community know that the business is committed to this effort.

### **3. Increased Public Awareness**

Independent Living Centers ("ILC's") are organizations located in communities that assist individuals with disabilities in obtaining reasonable accommodations so that they may live independently. ILC's seek to enforce state and federal laws protecting the rights of the disabled, and have helped to identify systemic issues of public concern. The OAG recognizes that ILC's and other disability advocacy organizations across New York State have been and continue to be an invaluable resource for individuals with disabilities. The OAG encourages ILC's to continue to work in their communities to increase awareness about issues affecting the disabled, and about service animals in particular, including using this report as an educational tool for businesses and individuals.

### **4. Public/Private Partnerships**

The OAG supports a broad based attempt by interested parties -- such as governmental entities and independent organizations -- to educate the community about the laws protecting the rights of the disabled. Coalitions consisting of advocates, community organizations, and local, state and federal governments can share information and resources that promote increased awareness about the laws. Such coalitions also can work together to lobby for strengthened laws when necessary.



## 5. Etiquette

Service animals are trained to assist their companion in very specific ways, and are trained to ignore distractions and focus on their tasks.

Consequently, disability rights experts advise the public to remember the following when encountering a person with a service animal:<sup>15</sup>

- Address the person, not the animal.
- Do not pet the animal.
- If you are walking with a person with a service animal, walk next to the person, not on the side of the animal.
- If you would like to offer assistance, ask first (for example, do not grab a person's arm to help guide them, it might startle them).
- If you encounter a person with a service animal who is accompanied by another person, speak directly to the animal handler if you have a comment or question about their need for an accommodation.
- Do not automatically assume that a person with a service animal is blind.
- If you are on the street with your pet and encounter a person with a service animal, keep your pet from interfering with the service animal; if possible, hold onto your pet and let the person with the service animal pass.

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<sup>15</sup> RoseMarie McCaffery, President, Guide Dog Users of New York.

## C. Frequently Asked Questions and Answers

**Q:** *What must I do when an individual with a service animal comes into my business?*

**A:** Permit the service animal to accompany its companion to any area of the establishment where other patrons are allowed to go. A business may not segregate the individual with a service animal from other patrons (and may only exclude the animal if it would fundamentally alter the nature of the business, which is not likely in establishments such as restaurants, hotels, retail stores, theaters, concert halls, or sports facilities).

**Q:** *The health department has told me that we cannot admit pets, and must admit only seeing eye dogs (guide dogs). Does this mean that I can exclude other service animals?*

**A:** No. Since the ADA offers greater protection for individuals with disabilities than does New York State, it would be a violation to refuse to admit other types of service animals to your establishment.

**Q:** *Can I charge a maintenance fee for customers who bring a service animal into my business?*

**A:** No, extra fees, deposits or surcharges may not be imposed on a individual with a disability, even if deposits are normally required for persons accompanied by a pet.

**Q:** *Where should a restaurant seat a patron with a service animal?*

**A:** A patron with a service animal should be seated as other patrons, any place they would be comfortable – do not assume that they would prefer to sit in the back.

**Q:** *I operate a taxicab. Am I violating the law if I refuse to pick up someone with a service animal?*

**A:** Yes, taxicabs and car services are required to accommodate individuals with disabilities, and may not charge a higher fare, or an extra fee to do so.



Q: *Am I responsible for the animal while the individual and service animal are in my establishment?*

A: No, the owner is responsible for the care and supervision of his or her service animal.

The OAG hopes that this report has provided insight concerning some of the special challenges faced by individuals with disabilities with service animals. Together, we can strive to eradicate improper treatment and all forms of discrimination, and foster a more comfortable living environment. For information on discrimination against individuals requiring the service of an animal, or to request a complaint form or the Civil Rights Bureau's brochure concerning service animals, please contact:

The Office of Attorney General Eliot Spitzer  
Civil Rights Bureau  
120 Broadway, 23<sup>rd</sup> Floor  
New York, New York 10271  
(212) 416-8250  
<http://www.oag.state.ny.us>

## **APPENDIX A**

### **METHODOLOGY**

The Office of the Attorney General conducted its service animal initiative over the course of seven months (from February 2001 through August 2001). During those months, the OAG staff sent mailings to and met with representatives from various Independent Living Centers ("ILC's"), organizations that train service animals, disability rights organizations, and complainants. Through these mailings and meetings, the OAG identified volunteers across New York State who use or train service animals and who were willing to conduct site visits of various places of public accommodation as a test to measure responses. The volunteer testers conducted site visits of various places of public accommodation over a period of ten weeks from May 31 through August 30, 2001. For quality assurance, at least one attorney, staff, or intern from the OAG accompanied each tester on the site visits.

Prior to conducting specific site visits, the OAG established goals for the initiative and developed criteria for measuring responses. Consequently, the overriding purpose of the initiative was to gain insight from the experiences of persons who use or train service animals, and to use that information to identify areas that could benefit from increased public awareness of the issues and the law. The initiative was not intended to unveil all of the various types of ill treatment encountered by persons who use service animals, but rather to create

a snapshot of typical experiences, both good and bad, in a variety of settings.

## **1. The Tests**

Eighteen (18) people, exclusive of OAG personnel, acted as testers throughout the state. The OAG selected testers with service animals that provide varying degrees of services to their disabled companions.<sup>16</sup> Several volunteers had sight impairments and relied on their service dogs to help guide them. Some volunteers had mobility impairments and used service dogs to assist them with such things as opening doors, picking up dropped items, and helping with balance. Others used service animals to help compensate for non-apparent impairments, for example, hearing impairments, or disabling seizures. Fourteen (14) testers had apparent impairments; 4 had non-apparent impairments.

Fifty-five (55) tests were conducted in 12 regions across the state. The regions included the metropolitan New York City area, Long Island, Westchester, Poughkeepsie, Albany, Binghamton, Syracuse, Rochester, Utica, and Buffalo. The target sites included places of public accommodation as outlined in the ADA. Specific locations were in some instances selected randomly, and in other cases based on complaints received by the Civil Rights Bureau. The OAG sought to include a cross section of types of public accommodations, including service establishments, lodging accommodations,

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<sup>16</sup> Although the OAG is sensitive to the fact that there are many types of service animals, this Initiative utilized the services of volunteer testers with service dogs.

eateries, places of entertainment, transportation providers, and other retail establishments. (See Appendix C)

- Restaurants and other dining establishments: 16 (29%)
- Places of Entertainment/Amusement: 4 (7%)
- Transportation: 5 (9%)
- Stores and Service Establishments: 19 (35%)
- Lodging: 1 (1.8%)
- Other: 10 (18%)

The volunteers visited assigned locations on random days and times during the testing period. An OAG escort observed the actions of each tester, the responses of patrons and employees, and other notable circumstances. The volunteers and OAG escorts were asked to record verbal responses, non-verbal conduct, and any issues concerning reasonable accommodations for persons with certain disabilities.

The volunteer testers and the OAG escorts were provided with an outline of guidelines and protocol for participating in the initiative. The protocol required that the volunteers: (1) be in control of the service animal at all times, as required by law; (2) be assertive, but not confrontational; and (3) if questioned, briefly explain the law regarding service animals, but refrain from escalating the situation if the explanation was not accepted. The OAG escorts were advised to accompany the testers by posing: (1) as a companion or friend, or (2) as a

"ghost" or "shadow" (observing the test from a few feet away). Whether the OAG acted as a "companion" or "ghost" was determined on a case-by-case basis. Escorts were informed not to interfere with the test, unless there was reason to believe that a volunteer's or other person's safety was in jeopardy. A copy of the protocol is annexed as Appendix D.

At the completion of each test visit, the OAG escort debriefed the volunteer tester. Each volunteer tester was asked to complete a debriefing form which contained a series of questions about the tester's experience at a particular site. The form included such questions as: whether the tester was denied service, whether the tester was asked to pay extra fees, whether the tester was asked questions about his or her disability, and whether the tester was made to feel unwelcome. A copy of the debriefing form is annexed as Appendix E.

## **2. Analyzing the Debriefing Forms**

Attorneys in the Civil Rights Bureau reviewed the debriefing forms from all 55 tests. During that process, the issue of reconciling and quantifying the varying types of experiences arose, and certain trends emerged. For example, it appeared that persons with apparent disabilities – such as sight impairments or persons with wheelchairs – experienced less resistance to their service animals as compared to persons with non-apparent impairments, who seemed more likely to be questioned extensively about their disability and their need for a service animal. This discovery prompted the OAG to refocus the analysis of the results



to make comparisons between the experiences of testers in these two categories.

The OAG also decided to focus more squarely on the quality of the testers' experiences, as opposed to simply whether they were admitted into a particular establishment. Accordingly, the OAG analyzed each test visit to consider such questions as: (1) whether the tester was denied service; (2) whether the tester was harassed or subjected to treatment which made the tester feel unwelcome; (3) whether the tester was asked for fees that a non-disabled person would not be asked for; (4) whether the tester was unnecessarily interrogated; and (5) whether the tester was asked to produce documentation to confirm the disability or need for a service animal. By analyzing the forms in this way, the OAG sought better to understand whether persons with service animals were the victims of *unequal* treatment as compared to the treatment of persons without service animals.

Of the volunteer testers, 14 (78%) utilized service animals for apparent disabilities (such as sight impairments, and severe mobility impairments requiring the use of wheelchairs.) Four of the testers (22%) used service animals for non-apparent impairments (such as epileptic seizures, balance mobility impairments, and emotional disabilities).



## **APPENDIX B**

### **SERVICE ANIMALS IN THE EMPLOYMENT AND HOUSING CONTEXTS**

#### **1. Employment**

The right of a person with a disability to bring a service animal into the workplace is protected under both federal and state law. The federal laws that extend such protection are: (1) Title I of the ADA, which applies to all employment except individuals employed by a state entity; and (2) Section 501 of the Rehabilitation Act of 1973 which covers federal government employment. The New York State laws that protect the rights of persons with disabilities in the workplace are Sections 40-c and 47-a of the New York State Civil Rights Law and Sections 296(1)(a) and 296(14) of the New York State Executive Law.

According to those laws, employers must provide “reasonable accommodations” to individuals with disabilities who use service animals to enable qualified individuals with disabilities to perform the essential functions of their jobs. A reasonable accommodation can include permitting an employee to be accompanied by his or her service animal while at work. Indeed, where possible, allowing a service animal to accompany an employee to work is likely the most efficient and cost-effective solution. A service animal can help minimize the impact of a disability on a person’s job performance, as well as reduce such individual’s dependence on other people. Moreover, a service animal can eliminate the need for an individual with a disability to seek the assistance of a

co-worker, and can alleviate the stress and fatigue associated with overcoming the effects of a disability. In addition, a service animal often provides better assistance than a co-worker who is not specially trained. Colleagues are not always available or receptive to having their work interrupted to help the person with a disability at the moment such assistance is needed. Further, the necessary help may require complicated instruction or training. Unskilled assistance also may lead to injuries and/or lost work time. *Branson v. West*, 1999 U.S. Dist. LEXIS 19392 (N. D. Ill. 1999) (ordering doctor's employer to accommodate her request for a service animal).

## **2. Housing**

In addition to the ADA, the federal Fair Housing Act ("FHA") and various New York State statutes protect individuals with a disability who require the assistance of a service animal in their efforts to secure a comfortable residence. Under Section 3604(f)(2) of the FHA, it is unlawful "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of (A) that person; (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (C) any person associated with that person." Section 3604(f)(3)(A) of the FHA defines discrimination as "a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied

by such person if such modifications may be necessary to afford such person full enjoyment of the premises . . .” Moreover, Section 3604(f)(3)(B) extends the definition of discrimination as applicable to this section to “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” Further, Section 3604(b) reiterates the illegality of “refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” Finally, Section 3604(3)(i) mandates that “the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons.”

The New York State Civil Rights Law protects an individual from discrimination on the basis of disability and sets forth the rights of individuals with disabilities accompanied by guide, hearing, or service dogs. Specifically, an individual with a disability cannot be denied admittance to or the equal use and enjoyment of any private or public housing accommodation solely because the person has a disability and is accompanied by a guide, hearing or service dog. The term “guide, hearing, or service dog” is defined under that statute as a dog that is properly harnessed and has been or is being trained by a qualified person to aid and guide a person with a disability.

A housing provider is not permitted to charge any type of fee for an

individual to live with a service animal. Generally, neither a deposit nor a surcharge may be imposed. A housing provider, however, may charge a fee if a service animal causes damage, so long as it is the regular practice of the entity to charge non-disabled tenants for the same type of damage.

## APPENDIX C

### TEST ASSIGNMENT FORM

Testing Target Sites:

1. Lodging [Includes Hotels; Motels, B&B's] \_\_\_\_\_
2. Food Establishment [Includes Restaurants, Bars, Fast Food] \_\_\_\_\_
3. Theaters/Concert Halls/Stadiums \_\_\_\_\_
4. Convention Center \_\_\_\_\_
5. Grocery Store/Clothing Store/Department Store \_\_\_\_\_
6. Service Establishments \_\_\_\_\_  
[laundry mat, dry cleaner, bank, barber shop, beauty shop,  
travel agent, shoe repair, funeral parlor, office buildings]
7. Transportation [Includes Taxicabs, Trains, Buses] \_\_\_\_\_
8. Places of Public Display [museum, library] \_\_\_\_\_
9. Park, Zoo, Amusement Park \_\_\_\_\_
10. Schools \_\_\_\_\_
11. Social Service Centers [Day Care, Senior Centers] \_\_\_\_\_
12. Places of Exercise \_\_\_\_\_
13. Other: \_\_\_\_\_

## APPENDIX D

### GUIDELINES FOR VOLUNTEER SERVICE ANIMAL TESTERS

- Remember to coordinate your test visit with the OAG staff person assigned to accompany you
- Be courteous at all times
- Dress and groom yourself and your service animal appropriately for your testing site
- Be Positive and Assertive (please refrain from making any negative comments while conducting the test)
- Be sure to be in full control of your service animal at all times
- If you are challenged once, verbally explain that you are accompanied by a service animal, and that the law requires that the establishment allow your service animal to accompany you.
- If you are challenged again, show identification for the animal, or literature (if you normally carry such documentation)
- If you are challenged a third time during the same test, simply leave and document your experience
- Maintain your Composure (stay calm and polite, even if harassed)
- Take mental notes of any behavior, questions, or comments you encounter (both positive and negative)
- Take mental notes of any general accessibility issues
- Fill out the Test Debriefing Form as soon as possible (at least within 3 hours of your visit – if able, fill out form with assistance of OAG staff person immediately after test visit)



# APPENDIX E

## DEBRIEFING FORM FOR SERVICE ANIMAL TESTERS

Name:

DOB:

Address/Telephone:

Employment Information:  
[Include name and address of employer and job title, if relevant]  
[OPTIONAL]

Type of service animal:

Service animal provides:

Has service animal been trained:	YES
	NO

Where was service animal trained:

Name of Target Test Site:

Date of Test:

Please name anyone who accompanied you on your visit:

- |   |     |
|---|-----|
| • Were you denied service:              | YES |
|   | NO  |
| • Were you asked about your disability: | YES |
|   | NO  |

- Were you asked to show proof of disability/  
or for an ID card for service animal: YES  
NO
- Were you asked to pay any fees? YES  
NO
- If you walked around, were you followed? YES  
NO
- Were you offered any assistance? YES  
NO
- Were you welcomed into the establishment? YES  
NO
- Were employees courteous? YES  
NO
- Were other patrons courteous? YES  
NO
- Did you have contact with any people?  
[Please provide names, titles or descriptions of people, and substance of  
contact, conversation, and any questions asked]
- Did you have any other accessibility issues:?  
[Please provide details]
- How did you feel about your experience? SATISFIED  
UNSATISFIED  
PLEASURABLE

• Had you visited the establishment before?

YES

NO

• If you visited the establishment before,

A. when was your visit?

B. did you have a problem?

ADDITIONAL NOTES:

Debriefed by:

## APPENDIX F

### SAMPLE SIGN

(Sign to be posted in braille as well at 2 pt. type)

INDIVIDUALS WITH DISABILITIES  
AND  
THEIR SERVICE ANIMALS ARE  
WELCOME AS REQUIRED BY LAW

If you believe this policy has been violated, please ask for a Complaint Form from the desk manager, complete the Form, and return it to the desk manager who will give you a copy for your records.

## APPENDIX G

### SAMPLE SERVICE ANIMAL POLICY & ACKNOWLEDGMENT FORM

Company XYZ ("Company") does not permit discrimination against individuals with disabilities, including those who require the assistance of a service animal(s).

The Americans with Disabilities Act ("ADA"), a federal law, defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If an animal meets this definition, it is considered a service animal under the ADA and is not required to be licensed or registered as such. Many service animals do not wear special collars and harnesses, but are afforded the very same protections as those that do.

Service animals perform some of the functions and tasks that individuals with disabilities cannot perform themselves. Most people are familiar with certain service animals such as "seeing eye dogs" or "guide dogs," which are used by some individuals who are blind or who have severe sight impairments. But there are many other kinds of service animals that assist individuals with other kinds of disabilities in their day-to-day activities. Examples include, but are not limited to, animals that:

- alert individuals with hearing impairments to sounds;
- pull wheelchairs or carry and pick-up items for individuals with mobility impairments;
- assist individuals with mobility impairments with balance; and
- help individuals who have depression or other mental disabilities with feelings of anxiety and panic.

**You must permit the service animal to accompany the individual into the business.** No additional charge or fee may be imposed on a patron directly or indirectly because that patron has a service animal. Even if the establishment has a no pets policy, a service animal is not considered a "pet" under the ADA. Consequently, a no pets policy does not apply to an individual with a disability who uses a service animal.

If you are uncertain whether an animal is a service animal, you may ask the individual if the animal is used to assist with a disability. However, you may not ask about the individual's disability, nor may you demand or require documentation of the individual's disability or proof that the animal is a service animal. Individuals often do not carry documentation of their medical condition or disability and they are not required to do so.

Any employee who knowingly violates Company's Service Animal Policy will be subject to disciplinary action, which can include termination of employment.

I have read the policy above, understand it, and agree to abide by its terms and conditions.  
Acknowledged and Agreed:

-----  
SIGNATURE

-----  
DATE



## ACKNOWLEDGMENTS

The Office of the Attorney General and the Civil Rights Bureau would like to thank the testers, their service animals, the OAG staff and interns who participated in this project, and the following organizations for their contributions to the Service Animal Initiative:

ARISE

Catskill Center for Independence

Center for Disability Rights

Guide Dog Users of New York

Guiding Eyes for the Blind

Independent Living Center of Western New York

Long Island Center for Independent Living

New York State Independent Living Council

New York State Office of the Advocate for Persons with Disabilities

Northern Regional Center for Independent Living

Resource Center for Independent Living

Rochester Center for Independent Living

Southern Tier Independence Center

Staten Island Center for Independent Living

Taconic Resources for Independence









